

<u>New Claim</u>	<u>Previous Claim</u>
11	1
12, 13	6
14, 15	7
16, 17	8
18-20	9
21	10
22	2
23, 24	3
25-27	4
28-30	5
31, 32	<del>6</del>
33, 34	7
35, 36	8
37-39	9
40	10

Claims 2-9 were rejected under 35 USC § 112, second paragraph, as being indefinite. In response, Applicants point out that the method claims now recite positive, active method steps. Also, the “particular,” “particularly preferably,” and “preferably” clauses have been made the subject of separate dependent claims. In view of the foregoing, Applicants submit this rejection is overcome. An early notice to that effect is earnestly solicited.

For the record, Applicants emphasize that although the claims were revised to overcome this rejection, and, therefore, might be considered to have been amended for a reason substantially related to patentability, a fair reading of the amended claims will reveal that the departures from the previous claims were for clarification purposes only, and that Applicants did not narrow the claims in any material respect. Therefore, Applicants submit that the amended claims are entitled to the full range of equivalents.

Claims 1-10 were rejected under 35 USC § 103(a) as being obvious over Dahms et al. ("Dahms"), U.S. Patent No. 5,744,062. In response, Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

Applicants believe that the rejection is deficient in the following respects:

- (1) Although the Examiner allegedly has shown glyceryl stearate citrate, sorbitan stearate and cetearyl alcohol among the list of coemulsifiers in Dahms, and electrolytes among the list of primary emulsifiers in Dahms, even if true, there is no teaching or suggestion anywhere in Dahms that all four components should simultaneously be selected or combined. Since obviousness of the present claims would require selection and combination of all four components, and such is not

taught or suggested by Dahms, none of the present claims is obvious in view of Dahms.

- (2) Applicants can find no mention in Dahms of usefulness to care for skin. In the absence of such teaching, claim 22 cannot be obvious over Dahms.
- (3) Applicants can find no teaching in Dahms that glyceryl stearate citrate, sorbitan stearate, cetearyl alcohol and electrolytes were ever actually combined or, if combined, were found or would have been expected to stabilize or to increase the stability of the emulsion to the presence of the electrolytes. In the absence of such teaching, the method of claims 23-40 cannot be obvious either. Further, since it does not appear that these four components were ever actually combined, the purpose of the instant method cannot be argued to have been inherently practiced. Consequently, again, it is not seen how Dahms renders obvious the method of claims 23-40.

As indicated in the instant specification, a disadvantage in particular of O/W emulsions is frequently their inadequate stability to relatively high electrolyte concentrations, which manifests itself in phase separation. This can occasionally lead to problems, even in the case of

W/O emulsions, although it is by no means as important here as in the case of O/W systems.

While these can often be remedied to a certain extent through appropriate choice of the emulsifier system, other disadvantages, however, arise just as often.

On the other hand, it is often desirable to use certain electrolytes in order to be able to utilize their other physical, chemical or physiological properties.

Applicants have unexpectedly discovered that this problem can be solved by combining components (I) - (IV). There is absolutely no teaching or suggestion of this problem or its solution in Dahms. Accordingly, the instant claims, which claim the novel features of the present invention, represent a patentable advance over Dahms.

In view of the foregoing, Applicants submit that the Examiner would be fully justified to reconsider and withdraw this rejection. An early notice that this rejection has been reconsidered and withdrawn is earnestly solicited.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.



GÜNTHER SCHNEIDER ET AL.  
USSN 09/581,412

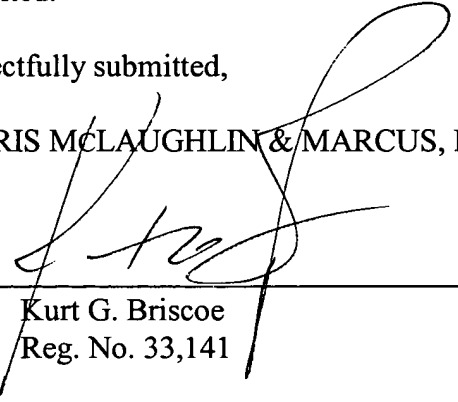
Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

By

  
Kurt G. Briscoe  
Reg. No. 33,141

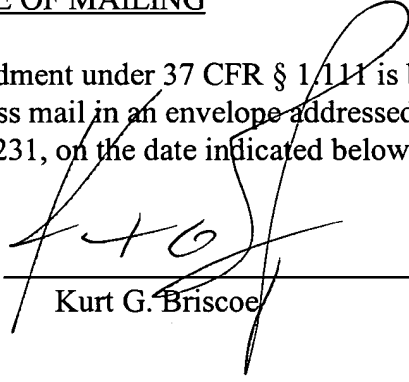
220 East 42<sup>nd</sup> Street  
30<sup>th</sup> Floor  
New York, New York 10017  
(212) 808-0700

CERTIFICATE OF MAILING

I hereby certify that the foregoing Amendment under 37 CFR § 1.111 is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Hon. Commissioner of Patents, Washington, D.C. 20231, on the date indicated below:

Date: May 23, 2001

By

  
Kurt G. Briscoe